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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th March 2007

No. 2266 — li/ 1(B) - 123/03 - L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th February 2007 in I.D. Case No. 16 of 2004 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the management of M/s Suryo Papers Ltd., Bhubaneswar represented through M/s Suryo Paper Ltd. Employees Union, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL
BHUBANESWAR.

INDUSTRIAL DISPUTE CASE No.16 OF 2004

Dated the 12th February 2007

Present :

Sk. Jan Hossain, o.s.j.s. (Sr. Branch)
Presiding Officer
Industrial Tribunal
Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s Suryo Papers Ltd.
Bhubaneswar.

And

Their Workman represented through .. Second Party— Workman
Suryo Papers Ltd.
Employees Union
Bhubaneswar.

Appearances :

For the First Party — Management .. Shri M. K. Panda, Law Officer

For the Second Party— Workman .. Shri R. C. Satpathy,
President of the Union.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of

Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No.6189 — II/1 (B)-123/03 -L. E., dated the 17th July 2004:—

"Whether the action of the management of M/s Suryo Papers Ltd., Rasulgarh, Bhubaneswar in reducing the number of National and Festival Holidays from 17 to 8 for the Calendar year, 2002 is legal or justified ? If not, what should be the details ?"

2. As per petition of Shri Ramkrishna Mandal, who is the Secretary of the Suryo Papers Ltd. Employees Union, he filed the present position on behalf of the second party-workman. The brief facts of the case are that —

All the regular workmen were initially appointed in Orissa Card Board Box Industries, B/18, Industrial Estate, Bhubaneswar. They were enjoying 17 National and Festive Holidays since inception of the organisation. Subsequently, the organisation was renamed as "Suryo Papers Limited" and all the assets and liabilities were transferred to it without making any change in the conditions of service of the workers. The workers were allowed to enjoy 17 National and Festival Holidays during a calendar year as usual. It is the specific case of the petitioner that the management declared 17 National and Festive Holidays of the year as paid holidays after consultation with the representatives of the workmen. On the 29th December 2001 a proposal was submitted to the management for declaring 17 National and Festive Holidays as paid holidays for the year 2002 for the workers. The management reduced the holidays from 17 to 8 for the Calendar year, 2002. For it a dispute arose. A conciliation proceeding was started on the basis of such complaint. On failure of the conciliation the present reference is made.

3. The management of M/s Suryo Papers Ltd. filed written statement in the Tribunal stating therein that the present reference is not maintainable both on facts and law and the Secretary, Suryo Papers Ltd. Employees' Union has no *locus standi* to file such petition. It is the case of the management that the previous unit, i.e., M/s Orissa Card Board Box Industry was taken over by the present management in the year 1995 with all its assets and liabilities for better production, higher productive and to reduce the losses of the erstwhile management. It is stated that the management in compliance to the provisions of Section 3 of the Orissa Industrial Establishment (National and Festival) Holidays Act and its Rules, 1972 has reduced the number of paid holidays from 17 to 8 to protect the organisation from heavy financial losses. So far as the management is concerned, the stand taken in the written statement is that it was understood by the so-called union that in order to reduce the losses more days will be made productive days instead of paying wages for the days without any production.

4. On the basis of the respective cases of both the parties, this Tribunal framed the issues given below for consideration :

ISSUES

- (i) "Whether the action of the management of M/s Suryo Papers Ltd., Rasulgarh, Bhubaneswar in reducing the number of National and Festival Holidays from 17 to 8 for the Calendar year, 2002 is legal or justified ?
- (ii) If so not, what should be the details ?"

5. In support of the claim, the Union has examined only its Secretary. The management has examined the Cashier and produced document marked as Exts. A to C.

6. It is not in dispute that Shri Ramkrishna Mandal, Secretary of Suryo Papers Ltd. Employees' Union has examined himself as W.W.No. 1. He has stated that "the first party Suryo Papers Ltd. started functioning since 1974. Earlier it was styled as Orissa Card Board Industries Ltd. I started working in the said Company since 1979. Along with me 32 staffs were in the job. Eight employees were working in the office. I was availing 17 National Holidays and so also the other workers. Since 1995 the ownership of the Company was transferred to Suryo Papers Ltd. I availed the same 17 days holidays till 2001. There was no agreement to reduce the leave, but a settlement was arrived at to take-up all the liabilities of the employees. The leave was reduced to eight days from 2002. No notice was given before reducing the leave..... No discussion was made for reducing the

leave. " In the cross-examination it was suggested to him that a meeting to reduce the leave was held and they attended the meeting that the workers assured to co-operate by availing minimum 8 numbers of holidays, which he denied. It may be noticed that except the bare suggestion no question was further put to the said witness to show that the workers gave consent to it.

M. W. No. 1, Shri Bibudhendra Rout, Cashier of Suryo Papers Ltd. in his evidence has admitted that in the year 2001 the workers were enjoying 17 paid holidays. The management denied to give such benefit after 2001 due to losses. In cross-examination he has admitted that no notice for such reduction of holidays was given. There was no agreement with the Union to that effect. Losses caused to the Industry was not intimated to the workman or the Union.

7. From the evidence stated above, it is clear that the change in holidays has been done unilaterally. No opportunity of hearing has been given to the Union or the workman likely to be affected by such change. The admitted fact is that the workers were enjoying 17 National and Festival paid holidays.

8. Section 9-A of the Industrial Disputes Act reads as under :—

" 9-A. Notice of change :- No employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; or

(b) within twenty-one days of giving such notice :

Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

9. It is thus violative to the provisions of Section 9-A of the Industrial Dispute Act. Since the change has not been effected in pursuance of any settlement, it cannot be accepted. Hence, the reference is answered in the following manners :—

The action of the management of M/s Suryo Papers Ltd., Rasulgarh, Bhubaneswar in reducing the number of National and Festival holidays from 17 to 8 for the Calendar year, 2002 is neither legal nor justified.

Dictated and corrected by me.

Sk. JAN HOSSAIN
12-2-2007
Presiding Officer
Industrial Tribunal
Bhubaneswar

Sk. JAN HOSSAIN
12-2-2007
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government